

CHUGACH ALASKA NATIVES SETTLEMENT
IMPLEMENTATION ACT OF 1999

NOVEMBER 5, 1999.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed

Mr. YOUNG of Alaska, from the Committee on Resources,
submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 2547]

[Including cost estimate of the Congressional Budget Office]

The Committee on Resources, to whom was referred the bill (H.R. 2547) to provide for the conveyance of land interests to Chugach Alaska Corporation to fulfill the intent, purpose, and promise of the Alaska Native Claims Settlement Act, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Chugach Alaska Natives Settlement Implementation Act of 1999”.

SEC. 2. DEFINITIONS.

For the purposes of this Act, the following definitions apply:

(1) The term “ANCSA” means the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1601 et seq.).

(2) The term “ANILCA” means the Alaska National Interest Lands Conservation Act of 1980, as amended (16 U.S.C. 3101 et seq.).

TITLE I—EASEMENT FOR ACCESS

SEC. 101. FINDINGS.

The Congress finds that—

(1) Chugach Alaska Corporation, formerly known as Chugach Natives, Inc., is the Alaska Native Regional Corporation organized under the authority of ANCSA for the Chugach people in the Chugach region;

(2) ANCSA promised the Chugach people a fair and just settlement of their aboriginal claims to lands and waters in Alaska;

(3) pursuant to section 1430 of ANILCA, the Secretary of the Interior, the Secretary of Agriculture, the State of Alaska, and Chugach Alaska Corporation were directed to study land ownership in and around the Chugach region for the purposes of—

(A) providing a fair and just land settlement for the Chugach people and realizing the intent, purpose, and promise of ANCSA by Chugach Alaska Corporation; and

(B) identifying lands that, to the maximum extent possible, are of the like, kind, and character of those traditionally used and occupied by the Chugach people, and, to the maximum extent possible, are coastal accessible and economically viable;

(4) on September 17, 1982, the aforementioned parties entered into the 1982 Chugach Natives, Inc. Settlement Agreement in order to set forth a fair and just land settlement for the Chugach people pursuant to the study directed by Congress, which among its many provisions—

(A) required the United States to convey to Chugach Alaska Corporation not more than 73,308 acres of land in the vicinity of Carbon Mountain, which tract of land contains significant natural resources, but is inaccessible by road;

(B) granted Chugach Alaska Corporation rights-of-way across Chugach National Forest to such tract of land, and required the United States to grant to Chugach Alaska Corporation an easement for the purpose of constructing, using, and maintaining roads and other facilities necessary for the use and development of that tract of land;

(C) required Chugach Alaska Corporation to apply to the Forest Supervisor for Chugach National Forest for conveyance of the easement, and to provide such information as may be prescribed by the Forest Supervisor; and

(D) reserved in the United States the right to prepare environmental documents in connection with the easement grant, consistent with the provisions of section 910 of ANILCA, if deemed desirable by the responsible Federal agency;

(5) on September 11, 1996, the Forest Supervisor deemed preparation of environmental documents for the easement desirable;

(6) on August 8, 1997, and January 21, 1998, Chugach Alaska Corporation and the United States Forest Service entered into collection agreements, pursuant to which Chugach Alaska Corporation was required to pay to the United States Forest Service the costs of United States Forest Service personnel involvement in the preparation and review of environmental documents and processing of the easement application;

(7) on March 13, 1998, Chugach Alaska Corporation and the United States Forest Service entered into a Memorandum of Understanding, pursuant to which the parties reached agreement on—

(A) the information prescribed by the Forest Supervisor, in a detailed work plan prepared jointly by United States Forest Service and Chugach Alaska Corporation representatives;

(B) the process for the preparation and approval of environmental documentation in support of the easement; and

(C) the requirement that the United States Forest Service grant an easement to Chugach Alaska Corporation within 45 days after receiving a complete easement application from Chugach Alaska Corporation;

(8) In furtherance of providing the environmental documentation prescribed by the Forest Supervisor, Chugach Alaska Corporation, at its sole expense—

(A) contracted for the performance of field surveys and the preparation of resource reports on the cultural resources, wetlands, threatened, endangered, and sensitive plant and animal species, vegetation, and fish and wildlife in the easement project area, as depicted on the map entitled “Project Area and Corridor Carbon Mountain Access Project 1–14–98”.

(B) submitted the resource reports to the United States Forest Service for review and comment, and contracted for further field surveys and reports as and when requested by the United States Forest Service;

(C) in conjunction with United States Forest Service biologists, contracted for the performance of field surveys and the preparation of reports for waterfowl, goshawk, and goat kidding areas in the easement project area;

(D) contracted for the preparation of bridge designs and hydrological analyses for major crossings within the easement project area, submitted such designs and analyses to the United States Forest Service for review and comment, and modified such designs pursuant to comments received from United States Forest Service specialists;

(E) prepared a transportation plan for the easement and road, including maintenance and design standards and an erosion control plan, for review by United States Forest Service engineers and specialists; and

(F) contracted for the preparation of a draft road design for field and office review by United States Forest Service engineers and specialists, and for the modification of such design pursuant to comments received by the United States Forest Service;

(9) In June 1998, an interdisciplinary team of specialists in the fields of fisheries, hydrology, engineering, soils, wildlife, recreation, and visual quality from the United States Forest Service and Chugach Alaska Corporation and its contractors conducted an extensive field review of the easement corridor and road location, the costs of which were borne by Chugach Alaska Corporation, and United States Forest Service specialists concurred with Chugach Alaska Corporation on the location of the easement corridor;

(10) Following the interdisciplinary team review and concurrence, United States Forest Service staff officers, including the Forest Supervisor for the Chugach National Forest, conducted a field review of the road location and affirmed such concurrence;

(11) on January 12, 1999, the Forest Supervisor determined that Chugach Alaska Corporation had completed all studies and provided adequate documentation to support its easement application;

(12) on January 19, 1999, Chugach Alaska Corporation submitted the complete easement application, containing all information prescribed by the Forest Supervisor, in a multivolume collection of the extensive field work, reviews, reports, analyses, and modifications performed and relied upon in support of the easement, and entitled "Documentation in Support of an Easement Application for Road Access Via the Martin River Valley to the Bering River Coal Fields as Granted by the 1982 CNI Settlement Agreement";

(13) to date, the United States Forest Service has failed to grant Chugach Alaska Corporation an easement for access to its lands in the vicinity of Carbon Mountain;

(14) without such easement, the lands conveyed to Chugach Alaska Corporation in the vicinity of Carbon Mountain cannot be utilized or developed in a manner consistent with the intent of congress as expressed in the ANILCA and ANCSA;

(15) Chugach Alaska Corporation has incurred considerable expense and delay in its efforts to achieve the fair and just settlement Congress intended and promised to the Chugach people more than 2 decades ago pursuant to ANCSA;

(16) the easement requirement under the 1982 Chugach Natives, Inc. Settlement Agreement should be granted without further delay.

SEC. 102. PURPOSE.

The purpose of this title is to provide Chugach Alaska Corporation with access to and for the utilization and development of land interests in the vicinity of Carbon Mountain that were conveyed to Chugach Alaska Corporation pursuant to ANCSA.

SEC. 103. CONVEYANCE.

Notwithstanding any other provision of law, as soon as practicable but not later than 14 days after the date of the enactment of this title, the Secretary of Agriculture shall grant Chugach Alaska Corporation a perpetual easement located and having the specifications as set forth in the "Documentation in Support of an Easement Application for Road Access Via the Martin River Valley to the Bering River Coal Fields as Granted by the 1982 CNI Settlement Agreement", for the purposes and facilities described therein.

SEC. 104. EASEMENT.

Unless otherwise agreed to by the Secretary of Agriculture and Chugach Alaska Corporation, the easement granted under section 103 of this title shall—

- (1) include sufficient lands for logistical staging areas and construction material sites used for the construction and maintenance of a single-lane forest road; and
- (2) include the right for Chugach Alaska Corporation, or its assignees, to construct, operate, and maintain related facilities and structures within the right-of-way.

SEC. 105. TRANSFER.

If within 1 month from the date of the enactment of this title the Secretary of Agriculture and Chugach Alaska Corporation fail mutually to agree on the terms and conditions of the use of the easement, then the easement is hereby granted to Chugach Alaska Corporation, and such grant shall be deemed as a conveyance pursuant to ANCSA.

TITLE II—CEMETERY SITES AND HISTORIC PLACES

SEC. 201. DEFINITIONS.

For the purposes of this title, the following definitions apply:

- (1) The term “Federal Government” means any Federal agency of the United States.
- (2) The term “Secretary” means the Secretary of the Interior.

SEC. 202. FINDINGS.

The Congress finds the following:

- (1) Pursuant to section 14(h)(1) of ANCSA, the Secretary has the authority to withdraw and convey to the appropriate regional corporation fee title to existing cemetery sites and historical places.
- (2) Pursuant to section 14(h)(7) of ANCSA, lands located within a National Forest may be conveyed for the purposes set forth in section 14(h)(1) of ANCSA.
- (3) Chugach Alaska Corporation, the Alaska Native Regional Corporation for the Chugach Region, applied to the Secretary for the conveyance of cemetery sites and historical places pursuant to section 14(h)(1) of ANCSA in accordance with the regulations promulgated by the Secretary.
- (4) Pursuant to such regulations, Village Corporation selections were given priority over Regional Corporation selections for the same lands.
- (5) Chugach Alaska Corporation’s section 14(h)(1) applications for lands that were selected by and conveyed to Village Corporations in the Chugach Region were either withdrawn by Chugach Alaska Corporation or denied by the Secretary.
- (6) As part of the Exxon Valdez Oil Spill Restoration Program, the Federal Government has acquired and is in the process of acquiring lands from Village Corporations in the Chugach Region that Chugach Alaska Corporation applied for pursuant to section 14(h)(1) of ANCSA and lands from other private parties in the Chugach Region that contain cemetery sites and historical places.
- (7) The fulfillment of the intent, purpose, and promise of ANCSA requires that lands Chugach Alaska Corporation selected or would have selected under section 14(h)(1) of ANCSA and that were subsequently acquired by the Federal Government should be made available for conveyance to Chugach Alaska Corporation as cemetery sites and historical places pursuant to section 14(h)(1) of ANCSA, subject only to a determination that such lands meet the eligibility criteria for historical places or cemetery sites, as appropriate, set forth in the Secretary’s regulations.

SEC. 203. WITHDRAWAL OF LANDS.

Notwithstanding any other provision of law, the Secretary shall withdraw from all forms of appropriation—

- (1) all public lands for which Chugach Alaska Corporation filed an application for conveyance pursuant to section 14(h)(1) of ANCSA as a cemetery site or an historical place, and such application was denied because the land was selected by and conveyed to a Village Corporation; and
- (2) all lands that the Federal Government acquired or hereafter acquires from Village Corporations or other private parties in the Chugach Region in connection with the Exxon Valdez Oil Spill Restoration Program.

SEC. 204. APPLICATION FOR CONVEYANCE OF WITHDRAWN LANDS.

Chugach Alaska Corporation shall apply to the Secretary for the conveyance of lands as cemetery sites or historical places under section 14(h)(1) of ANCSA as follows:

(1) With respect to lands withdrawn pursuant to subsection 203(1) of this title, by filing with the Secretary a request for reinstatement of its original application, together with any amendments authorized under section 205 of this title.

(2) With respect to lands withdrawn pursuant to subsection 203(2) of this title, for which Chugach Alaska Corporation has not filed an application under section 14(h)(1) of ANCSA with the Secretary, by filing with the Secretary an application in accordance with the regulations promulgated by the Secretary as of the date of enactment of this title.

The Secretary shall accept all such requests filed within the periods set forth in section 207 of this title.

SEC. 205. AMENDMENTS.

Chugach Alaska Corporation may amend original applications filed with the Secretary for the conveyance of lands pursuant to section 14(h)(1) of ANCSA—

(1) to include lands withdrawn pursuant to section 203 of this title which are adjacent to lands Chugach Alaska Corporation selected in its original application and that Chugach Alaska Corporation deems culturally important and potentially eligible as a cemetery site or historical place; and

(2) to cure technical defects.

SEC. 206. PROCEDURE FOR EVALUATING AND CONVEYING SELECTED LANDS.

The lands selected by Chugach Alaska Corporation pursuant to sections 204 and 205 of this title shall be evaluated for their eligibility as cemetery sites and historical places, as appropriate, and conveyed to Chugach Alaska Corporation, in accordance with the criteria and procedures set forth in the regulations promulgated by the Secretary as of the date of the enactment of this title. To the extent that such criteria and procedures conflict with any provision of this title, the provisions of this title shall control.

SEC. 207. REINSTATEMENT PERIOD.

Notwithstanding any other provision of law, Chugach Alaska Corporation shall have—

(1) 1 year from the date of enactment of this title to file a request for reinstatement under subsection 204(1) of this title, together with any amendments authorized under section 205 of this title; and

(2) 4 years from the date of recording the conveyance document for any Federal acquisition of lands to file an application under subsection 204(2) of this title.

SEC. 208. APPLICABILITY.

This title shall apply to all Federal acquisitions of the lands described in section 203 of this title, whether occurring prior to or after the date of enactment of this title.

TITLE III—FOREST SYSTEM LAND MANAGEMENT

SEC. 301. DEFINITION.

For the purposes of this title, the term “Alaska Native Corporation” means a “Native Corporation” as that term is defined in section 3(m) of ANCSA, as amended (43 U.S.C. 1601 et seq.).

SEC. 302. FINDINGS.

The Congress finds that—

(1) pursuant to ANCSA and ANILCA, Alaska Native Corporations own hundreds of thousands of acres of land intermingled with, adjacent to, or dependent for access upon National Forest System lands in Alaska;

(2) the United States Forest Service, in a letter dated June 30, 1998, to Chugach Alaska Corporation, the Alaska Native Regional Corporation for the Chugach Region established under ANCSA, disclaimed any legal obligation to coordinate the revision of the Chugach National Forest land and resource management plan with the plans of Alaska Native Corporations for the utilization of their lands and resources;

(3) the uncoordinated development, maintenance, or revision of land and resource management plans for units of the National Forest System in Alaska adversely affects the use, development, and value of the lands and resources conveyed to Alaska Native Corporations under ANCSA and ANILCA; and

(4) the proper management of National Forest System lands in Alaska and the fulfillment of the intent, purpose, and promise of ANCSA require coordination in the development, maintenance, and revision of land and resource management plans for units of the National Forest System in Alaska with the plans of Alaska Native Corporations for the utilization of their lands which are intermingled with, adjacent to, or dependent upon for access National Forest System lands.

SEC. 303. COORDINATION REQUIRED.

Notwithstanding any other provision of law, the Secretary of Agriculture shall coordinate the development, maintenance, and revision of land and resource management plans for units of the National Forest System in Alaska with the plans of Alaska Native Corporations for the utilization of their lands which are intermingled with, adjacent to, or dependent for access upon National Forest System lands. At a minimum, such coordination shall involve—

(1) notifying Alaska Native Corporations in advance of the development, maintenance, or revision of a land and resource management plan for a unit of the National Forest System in Alaska;

(2) meeting with Alaska Native Corporations at the beginning of the plan preparation, maintenance, or revision process to develop procedures for coordination;

(3) reviewing the plans of Alaska Native Corporations for the utilization of their lands and resources;

(4) assessing the impacts of Alaska Native Corporation land use plans on National Forest land and resource management planning, and determining how to address those impacts; and

(5) identifying conflicts between National Forest land and resource management plans and the land use plans of Alaska Native Corporations, and considering alternatives for resolving those conflicts.

SEC. 304. APPLICABILITY.

This title shall apply to all land and resource management plans for units of the National Forest System in Alaska—

(1) in the process of being developed or revised on the date of enactment of this title; and

(2) developed, maintained, or revised after the date of enactment of this title.

PURPOSE OF THE BILL

The purpose of H.R. 2547 is to provide for the conveyance of land interests to Chugach Alaska Corporation to fulfill the intent, purpose, and promise of the Alaska Native Claims Settlement Act.

BACKGROUND AND NEED FOR LEGISLATION

The Alaska Native Claims Settlement Act of 1971 (ANCSA) settled the aboriginal land claims of Alaska Natives by providing for the prompt conveyance of 44 million acres of land from the public domain to for-profit business corporations owned by Alaska Natives. These Native Corporations are the settlement vehicles that own and manage the land on behalf of their Alaska Native shareholders.

ANCSA declared that Alaska Natives' land claims would be "accomplished rapidly, with certainty, in conformity with the real economic and social needs of Natives, without litigation, with maximum participation by Natives in decisions affecting their rights and property."

However, where the Chugach Alaska Corporation (Chugach) is concerned, implementation of ANCSA has been anything but rapid, certain, without litigation or with the maximum participation of

the Natives in decisions affecting them. Chugach Alaska Corporation represents Natives from a southcentral region of Alaska.

H.R. 2547 resolves three problems in the implementation of ANCSA for the Chugach Natives. These problems pertain to access rights of Chugach (Title I); ownership of certain Native historical and cemetery sites (Title II); and Native corporation participation in National Forest System land planning and management (Title III).

Title I—Access easement

Title I grants an easement to Chugach for access to a remote tract of its ANCSA settlement land. In a 1982 settlement agreement, the Administration promised Chugach an easement across part of the Chugach National Forest to provide economic access to the inholding, but has not fully delivered on its obligation. Property without access is virtually meaningless to the Chugach Natives and is contrary to common law, federal statutes, and the intent of ANCSA.

Following the enactment of ANCSA in 1971, the federal government was extraordinarily slow to convey Chugach its settlement lands. To expedite the land conveyances, Congress inserted certain provisions in the Alaska National Interest Lands Conservation Act of 1980 (ANILCA) including a broad waiver under the National Environmental Policy Act for any actions relating to the implementation of ANCSA. Section 1430 of ANILCA called for a study of land ownership patterns in the Chugach region to identify lands and interests to fulfill the intent of ANCSA for the Chugach Alaska Corporation.

Chugach still did not obtain its land entitlement, and subsequently entered into litigation with the government. In 1982, Chugach and the federal government settled the litigation in the 1982 Chugach Natives, Inc. Settlement Agreement (Agreement). Under the Agreement, the United States awarded Chugach a 73,000-acre tract of land known as the Bering River Coal Fields or the Carbon Mountain Tract.

The Agreement also gave Chugach the right to apply for and receive an easement for access across the Chugach National Forest to the land-locked property, which is inaccessible by road. The Agreement further acknowledges that such an access easement is an “integral” condition precedent to the Natives’ willingness to settle the litigation. This clearly illustrates how Natives’ access to their settlement lands is central to realizing the purposes, promises, and intent of ANCSA.

While the Carbon Mountain Tract was conveyed in 1983, Chugach’s access rights were not granted. Delays in granting such rights persist to this day. A formal process to issue the easement providing access began in 1996. However, the Administration has committed to no time-certain day when the easement will be granted. Rather, the Administration insists that it be permitted, without a deadline, to continue negotiations over abstract contractual rights that bear little or no relevance to one of the primary purposes of the 1982 Agreement, which is to provide the Chugach Natives with use of the Carbon Mountain land via economic surface access to it.

These delays pile on to the historic setbacks endured by Chugach Natives in utilizing their settlement lands since ANCSA was passed. For example, Chugach had not received a single acre of settlement land for over ten years after ANCSA was implemented. Chugach Natives were also hit hard by the 1989 *Exxon Valdez* oil spill that occurred in their region, causing an economic upheaval and diversion away from developing Carbon Mountain. Additionally, Chugach by its own reckoning has spent over \$1 million on environmental planning that was required by the U.S. Forest Service as a condition of receiving the Carbon Mountain access easement.

While a number of local Forest Service staff in Anchorage worked diligently on Chugach's easement, the Administration has missed every self-imposed deadline to issue an easement.

To end the delays, H.R. 3087, a predecessor bill to H.R. 2547, was introduced in 1997 to grant the easement outright. H.R. 3087 was reported by the Committee on Resources and an amended version attached to the fiscal year 1999 Interior Appropriations bill. The measure was eventually set aside after Administration assurances the easement would be granted before the end of 1998. Again, a final easement has not been granted.

H.R. 2547 was introduced in the 106th Congress to grant the easement. During the Committee hearing on H.R. 2547, Agriculture Department witnesses asserted that negotiations over terms of the easement were nearing completion, precluding the need for the bill. However, these negotiations have caused continuing delays with no date-certain conclusion.

The prolonged delays fit a pattern. During the 105th Congress, the primary objection to legislation was that it was premature: environmental documents then under preparation by Chugach and the Forest Service were incomplete. Now that such documents prepared at a reported cost to Chugach of over \$1 million are complete and approved, "new" issues arise, with little assurance that "new" unforeseen issues will not surface. It is clear that legislation is necessary to grant the easement.

As reported, Title I of H.R. 2547 requires the Secretary of Agriculture to grant an easement within 14 days after enactment, during which time negotiations over terms and conditions should conclude. The easement will enable the construction of a single-lane forest road about 30 miles in length. However, if the Secretary does not comply, then one month after enactment, the easement is legislatively granted. H.R. 2547 specifies the location, standards, and terms of the easement through reference to a comprehensive set of environmental documents prepared under a Memorandum of Understanding with the Forest Service. The Administration has testified the documents are complete, adequate and accepted. For this reason, the time is ripe to grant the easement legislatively.

Title II—Native historical and cemetery sites

Section 14(h)(1) of ANCSA authorized the Secretary of Interior to "withdraw and convey to the appropriate Regional Corporation fee title to existing cemetery sites and historical places" located on unreserved public lands, national forests, and national wildlife refuges. However, Chugach reports that it has been able to acquire

only a small fraction of these places. In the meantime, the Exxon VALDEZ Oil Spill Trustee Council (EVOS) has purchased property containing historic and cemetery sites that Chugach desires to acquire pursuant to Section 14(h)(1) of ANCSA. Title II addresses this problem and reinstates Chugach's ability to select these small sites.

EVOS administers the civil and criminal settlement funds paid by Exxon Corporation in restitution for its 1989 oil spill in Prince William Sound, Alaska, an area abutting Chugach Alaska Corporation lands. The Council has acquired lands containing certain sites from Native village corporations and other private parties in the Chugach region. Chugach has reported that it was not consulted on many of the purchases although implementing regulations of Section 106 of the National Historic Preservation Act appears to require Chugach's concurrence in EVOS' undertakings.

The intent of Section 14(h)(1) of ANCSA was to convey historical sites and cemeteries to interested regional corporations when such places are in federal ownership and are not otherwise owned by Natives (including village corporations) or other parties whose ownership pre-exists ANCSA. Title II affords the Chugach regional corporation an opportunity to acquire Native historical, cultural, religious and cemetery sites bought by EVOS and sets forth the necessary withdrawal authority, procedures, and deadlines for allowing Chugach to acquire ANCSA Section 14(h)(1) sites it desires to own.

Title III—Forest planning

Alaska Native corporations own considerable interests in land within Alaska's national forests. Chugach in particular owns interests in 700,000 acres of land within the Chugach National Forest, and has access rights to its properties. The intermingled land ownership pattern presents significant challenges in the proper management of public and private lands. Title III requires that development or revision of national forest land plans be coordinated with Native corporations whose lands are intermingled with or adjoining national forests. Such coordination aids in avoiding land use conflicts and protects private property rights.

Following the Committee's decision to report H.R. 2547 favorably, President Clinton ordered the U.S. Forest Service to promulgate new rules that prohibit new road construction on at least 40 million acres of the national forest system, including the Chugach National Forest. ANILCA bars the application in Alaska of any study that supports the promulgation of these rules. Nonetheless, Title III is needed to protect the ANCSA interests of Natives who own land in or adjacent to national forests in Alaska until the President retracts the scope of the proposed rules to Alaska.

COMMITTEE ACTION

H.R. 2547 was introduced on July 16, 1999, by Congressman Don Young (R-AK). The bill was referred to the Committee on Resources. On July 28, 1999, the Committee held a hearing on the bill. On September 22, 1999, the Full Resources Committee met to mark up the bill. Congressman Don Young offered an amendment to shorten the period of time in which the easement granted under

Title I shall be conveyed to Chugach Alaska Corporation. It was adopted by voice vote. The bill as amended was then ordered favorably reported by voice vote to the House of Representatives.

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Resources' oversight findings and recommendations are reflected in the body of this report.

CONSTITUTIONAL AUTHORITY STATEMENT

Article I, section 8 and Article IV, section 3 of the Constitution of the United States grant Congress the authority to enact this bill.

COMPLIANCE WITH HOUSE RULE XIII

1. Cost of Legislation. Clause 3(d)(2) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out this bill. However, clause 3(d)(3)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974.

2. Congressional Budget Act. As required by clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, this bill does not contain any new budget authority, credit authority, or an increase or decrease in revenues or tax expenditures. According to the Congressional Budget Office, enactment of the bill might increase direct spending.

3. Government Reform Oversight Findings. Under clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee has received no report of oversight findings and recommendations from the Committee on Government Reform on this bill.

4. Congressional Budget Office Cost Estimate. Under clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for this bill from the Director of the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 18, 1999.

Hon. DON YOUNG,
*Chairman, Committee on Resources,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2547, the Chugach Alaska Natives Settlement Implementation Act of 1999.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Victoria Heid Hall (for

federal costs), and Marjorie Miller (for the state, local, and tribal impact.)

Sincerely,

BARRY B. ANDERSON
(For Dan L. Crippen, Director).

Enclosure.

H.R. 2547—Chugach Alaska Natives Settlement Implementation Act of 1999

CBO estimates that implementing H.R. 2547 would have no significant impact on discretionary spending. Because the bill could increase direct spending if its enactment results in an uncompensated taking of private property, pay-as-you-go procedures would apply.

Title I of the bill would require the Secretary of Agriculture to grant to the Chugach Alaska Corporation (CAC) an easement through the Chugach National Forest for the purpose of building a single-lane road and related facilities within the right-of-way. The title would require the easement to be granted within 14 days of the bill's enactment. According to the Forest Service, the agency expects to grant such an easement under current law as part of an existing settlement agreement with CAC. Although the bill could accelerate when the easement will be granted, we estimate that implementing this provision would have no significant impact on discretionary spending.

Title II would require the Secretary of the Interior to withdraw certain public and private lands from all forms of appropriations; usually, this means that federally owned land is set aside only for certain governmental purposes. The bill would require the Secretary to transfer ownership of any of the withdrawn lands following an application for conveyance from CAC. CBO assumes that for privately owned lands these provisions could lead to an uncompensated taking of private property, which could cause an increase in federal direct spending to compensate private land owners for the value of their property. We cannot predict, however, whether or not enacting this provision would lead to a taking; nor can we estimate the amount of compensation (if any) that might be due to private property owners.

Title III would direct the Forest Service to coordinate management planning for lands and resources in the National Forest System in Alaska with the plans of Alaska native corporations. Based on information from the Forest Service, we estimate that implementing this title would have no impact on federal spending because the agency already coordinates with interested parties under its current process.

H.R. 2547 may contain an intergovernmental mandate as defined in the Unfunded Mandates Reform Act (UMRA), but the cost of this mandate would not exceed the threshold established by that act (\$50 million in 1996, adjusted annually for inflation). Federal government actions required by title II might result in a taking of property rights belonging to Alaska native village corporations. If so, this would be a mandate under UMRA. CBO estimates, however, that any economic losses suffered by village corporations would be small. Further, should the courts determine that this bill

creates an unconstitutional taking, these corporations would be entitled to compensation from the federal government. No other provisions in this bill would impose any costs on state, local, or tribal governments. H.R. 2547 contains no private-sector mandates as defined in UMRA.

The CBO staff contacts for this estimate are Victoria Heid Hall (for federal costs), and Marjorie Miller (for the state, local, and tribal impact). This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

COMPLIANCE WITH PUBLIC LAW 104-4

This bill contains no unfunded mandates as defined under Public Law 104-4.

PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

This bill is not intended to preempt any State, local or tribal law.

CHANGES IN EXISTING LAW

If enacted, this bill would make no changes in existing law.

DISSENTING VIEWS

This legislation is highly controversial and very unlikely to become law. It is strongly opposed by both the Secretary of Agriculture and the Secretary of the Interior who are recommending that it be vetoed by the President if enacted. Title I preempts ongoing negotiations between the Forest Service and the Chugach Alaska Corporation (“CAC”) on issues related to a controversial road building project across national forest lands; Title II would authorize an unconstitutional taking of private property and the conveyance of certain lands out of public ownership which have been purchased by the *Exxon Valdez* oil spill trustees; and, Title III requires that national forest management be coordinated with corporate land owners.

The Administration was not allowed to present its testimony in opposition to the bill at the July 28, 1999 hearing on this legislation. Accordingly, a copy of that testimony, prepared jointly by the Forest Service and Department of the Interior, is attached as part of these views and summarized below:

“The bill preempts ongoing negotiations between the federal government and CAC; it repeals the rights of public access under the 1982 settlement agreement; reopens entitlements under the Alaska Native Claims Settlement Act; it gives regional corporations priority over village corporation rights; it postpones settlement of entitlements of 11 other regional corporation; it affects over 3,300 cultural sites and over 135,000 acres of land; and, finally, it unnecessarily imposes conditions on the Forest Service’s land management planning process by giving an unwarranted special review status to Alaska Native corporations.”

In essence, Title I would resolve—in CAC’s favor—ongoing negotiations with the Forest Service, thus granting CAC an unrestricted “perpetual easement” through lands in the fish and wildlife-rich Copper River Delta region of the Chugach National Forest in Alaska. CAC intends to use this easement to build a 55-mile long road crossing over 350 streams (194 streams and 30 miles of road on national forest lands) to access and log 8,000 acres of timber within 73,000 acres of CAC-owned property known as the Bering River Coal Fields/Carbon Mountain Tract. Those lands, and the right to a road access easement, were obtained by CAC through a 1982 settlement agreement with the U.S. and State of Alaska. After declaring bankruptcy in 1991, CAC sold the subsurface coal rights to the 73,000 acres to the Korean Alaska Development Corporation.

While it is the case that the Reagan Administration’s 1982 settlement agreement with the corporation provides for a process to determine the terms and conditions for road access across Chugach National Forest lands, only recently did CAC fully pursue obtaining an easement. In lieu of NEPA compliance, the Forest Service and CAC agreed to a MOU governing environmental documenta-

tion in March 1998. A joint field review of the road route was conducted in June of 1998. CAC submitted documentation in support of the easement route on January 19, 1999. On March 4, 1999, the Forest Service provided CAC with the text of a proposed easement and negotiations have continued off and on since then. It is unfair to put the blame solely on the Forest Service for the failure to produce an easement agreement.

Notwithstanding frustrations with the pace of these negotiations, it is inappropriate for the Congress to intervene legislatively in the manner provided for by H.R. 2547. Among other unresolved issues, the Forest Service is seeking to assure public access and safety on the portions of the road which cross Native corporation lands. However, CAC has little incentive to negotiate in good faith if they believe that this bill will become law and the easement would be conveyed by Congress without regard to the 1982 settlement agreement and the Forest Service's terms and conditions. And if the Forest Service were to fail to protect public access and safety as provided for in the 1982 settlement agreement, no doubt they would deserve public criticism.

But even if the easement issues are resolved between CAC and the Forest Service, major obstacles remain to actual construction of this road. Development threats in the Copper River Delta area of Alaska were controversial when President Teddy Roosevelt created the Chugach National Forest at the beginning of the century and they remain so today. Ironically, President Roosevelt and Gifford Pinchot were seeking to protect the very same lands that are now owned by CAC from exploitation by the Alaska Syndicate, a coal monopoly formed by the Guggenheim Brothers and John Pierpont Morgan.

In the 1980 Alaska National Interest Lands Conservation Act, Congress recognized the tremendous values of the Cooper River-Bering River area by mandating that the "conservation of fish and wildlife and their habitat shall be the primary purpose for management," a directive which is unique in the National Forest System (Section 501 of Public Law 96-487). As the National Wildlife Federation has commented: "[t]he Copper River Delta lies at the conflux of the Copper River and the Gulf of Alaska. At 700,000 acres it is the largest wetlands complex on the Pacific Coast of North America and an ecosystem of almost unparalleled productivity. The Delta hosts incredible numbers and varieties of fish and wildlife. Considered by biologists to be one of the most important shorebird habitats in the western hemisphere, the Delta is a critical staging area for over 16 million shorebirds and waterfowl. It supports world-renowned salmon runs and is a haven for grizzly bears, black bears, wolves, mountain goats, moose, mink, wolverines, otters, sea lions and harbor seals."

Given the environmental controversy, the significant expense of constructing and maintaining this 55 mile long road (30 miles crossing 194 streams on national forest lands), and the marginal economics of harvesting low-value hemlock trees in a depressed export market, some CAC shareholders have raised the alternative of selling a conservation easement in the CAC lands to the Forest Service. At the July 28th hearing on this bill, Dune Lankard, a CAC shareholder, proposed that Congress consider the option of of-

fering to purchase a conservation easement in CAC's lands. The goal would be to protect the important natural assets in the Copper River Delta while also providing a better direct financial return to the CAC shareholders than would be likely be the case that under the dubious economics of the road building and logging project. Thus far in its 28 year history, CAC has produced only minimal jobs or dividends for its 1,900 shareholders, according to Mr. Lankard.

Instead of proceeding with this ill-advised legislation, the committee should be working in the national interest to purchase, on a willing-seller basis, a conservation easement for the CAC lands at Carbon Mountain/Bering River. CAC was willing to sell the coal subsurface rights to this 73,000 acre tract to a Korean corporation. Moreover, other Native corporations in the Prince William Sound region have chosen to sell conservation easements to the *Exxon Valdez* oil spill settlement trustees rather than engage in economically marginal logging operations. Surely the shareholders of the Chugach Alaska Corporation would benefit by at least having the opportunity to compare the projected financial return and controversy associated with the road building/logging project and determine whether the option of a conservation easement and maintaining these lands for future generations would be preferable.

GEORGE MILLER.

Enclosure.

STATEMENT OF RONALD E. STEWART, FOREST SERVICE, DEPUTY
CHIEF FOR PROGRAMS AND LEGISLATION, DEPARTMENT OF AGRICULTURE

Mr. Chairman and members of the committee: Thank you for the opportunity to discuss this bill with you. I am Ron Stewart, Forest Service Deputy Chief for Programs and Legislation. I am accompanied today by James Snow from the Department of Agriculture, Office of the General Counsel, and Paul Kirton from the Department of the Interior, Office of the Solicitor. Both Mr. Snow and Mr. Kirton are lawyers who were on the federal team that negotiated the 1982 Chugach Natives, Incorporated (CNI) Settlement Agreement, and who are also involved in current negotiations between the federal government and Chugach Alaska Corporation.

At the outset, for this discussion, we note that the 1982 CNI Settlement Agreement ("1982 Agreement") was between the State of Alaska, the Federal Government and Chugach Natives, Incorporated (CNI). The successor corporation to CNI is Chugach Alaska Corporation (CAC). Depending on the context, we may refer to either or both CNI or CAC, but they both refer to the Alaska native regional corporation representing the natives of south central Alaska.

As noted below, we strongly oppose this bill. The bill preempts ongoing negotiations between the federal government and CAC; it repeals the rights of the public access under the 1982 Agreement; reopens entitlements under the Alaska Native Claims Settlement Act; it gives regional corporations priority over village corporation property rights; it postpones settlement of entitlements of 11 other regional corporations; it affects over 3300 cultural sites and over

135,000 acres of land; and, finally, it unnecessarily imposes conditions on the Forest Service's land management planning process by giving an unwarranted special review status to Alaska native corporations. Therefore, the Secretaries of the Interior and Agriculture will recommend that the President veto the bill should it be passed by the Congress.

TITLE I

The Alaska Native Claims Settlement Act of 1971 ("ANCSA") established a very complicated and expensive settlement of the land claims of Alaska natives. As this Committee is well aware, over 40,000 acres and almost a billion dollars constituted this settlement. CNI was one of the original twelve regional corporations with land selection entitlements under ANCSA. Its entitlement amounted to about 360,000 acres of federal land.

Unfortunately, from the outset of ANCSA, CNI was dissatisfied with ANCSA limitations on the amount of acreage which could be selected from within the National Forests. As a result, section 1430 of the Alaska National Interest Lands Conservation Act of 1980 (ANILCA), required a study to be conducted by the federal government, the State of Alaska and CNI to ascertain lands that might be made available for exchange to CNI. In the ensuing two years following the enactment of ANILCA, representatives of the Departments of Agriculture and the Interior, the State of Alaska and CNI worked hard to resolve the land selection issue. This process culminated in the 1982 Agreement, a 143 page contract which constituted the "full and final satisfaction of all rights and obligations of the United States to CNI."

Among other things, the 1982 Agreement provided for the exchange of CNI of thousands of acres of land within the Chugach National Forest. One of the principal tracts of land conveyed to CNI was the Bering River Coal Fields, sometimes called Carbon Mountain, a large area lying north of Katalla and east of the Copper River. Katalla and the Copper River constitute some of the most critical wildlife areas in Alaska, so much so that the Copper River area is designated for special management for wildlife under section 501(b) of ANILCA. However, obtaining access to the Bering River coal fields necessarily requires a road.

Because both CNI and the Federal government recognized the extreme importance and sensitivity of the areas involved, the 1982 Agreement devotes 9 pages of contractual provisions governing access to the Bering River area. In a carefully crafted negotiated settlement, the 1982 Agreement provides for the granting of easements to CNI under stringent terms and conditions. All of the parties understood that access would not be easy, cheap, or expeditious. Rather it was contemplated that access would be carefully and jointly planned to facilitate commercial use of the area with minimal environmental harm to the resources and allowance of public use of the rights-of-way.

The Forest Service has negotiated in good faith throughout this process. In March, 1999, within the promised 45-day period, the agency offered CAC an easement incorporating all the required terms and conditions required by the 1982 Agreement. CAC declined that offer. At the initiative of the Forest Service, negotia-

tions were renewed in early June and substantial progress was made toward agreement.

We are pleased to report that since the June meeting, the Forest Service and Chugach Alaska Corporation (CAC) have agreed on most outstanding issues. The principal obstacle now concerns rights of public access on the portions of the road crossing CAC land. We believe that the Agreement granted this right of access. Once this issue is resolved, the easement would be issued immediately. At this stage in the negotiations, we believe the parties are very close to an agreement. H.R. 2547 overrides the balance that was agreed to in 1982, and fails to protect public access to national forest lands, which the Departments oppose.

TITLE II: ANCSA HISTORIC SITE AND CEMETERY SELECTIONS

We believe that enactment of Title II as presently written constitutes a major rewrite of the CNI agreement, and of the Alaska Native Claims Settlement Act, could result in an unconstitutional taking of private property, would disrupt settlements with other Native corporations and spawn new litigation.

Title II of the bill would allow reinstatement of prior CNI applications under section 14(h)(1), pertaining to cemetery and historic sites, which were either rejected or withdrawn, for lands that have since been conveyed to village corporations. The 1982 Settlement Agreement explicitly prohibits CAC from expanding its claims to cemetery and historic sites. Section 16 of the agreement states that CNI (now CAC) shall not "assert or seek to acquire any other legal authority to make future selections pursuant to section 14(h)(1) of ANCSA within the national forests." Moreover, Regional corporations were not permitted to make Sec. 14(h) selections within village withdrawal areas. CAC's attempt to now lay claims to village-owned lands for cemetery and historic sites is at complete odds with the express terms of ANCSA. Such lands were never available to CAC for cemetery or historic sites.

Title II would have the United States convey interests in lands to CAC that the United States does not have; thus it would be ineffective. Section 203 of Title II would require the Secretary of the Interior to withdraw lands from two sources. All of these lands are subject to being transferred to CAC without compensation. First, any public land that was the subject of a section 14(h)(1) application by CNI and subsequently was conveyed to a village corporation is to be withdrawn. This could direct the Secretary of the Interior to withdraw for government purposes land which is in private ownership and which we do not own. Such action could result in placing a cloud on the title of other landowners, including the State of Alaska and the respective Village corporation.

The second source of land that would have to be given to CAC without compensation would be all those lands acquired by the federal government under the Exxon Valdez Oil Spill Restoration program (EVOS) in the Chugach region. Conveyances under Title II would also undermine one of the key benefits of the EVOS acquisitions, public access to lands acquired from Village corporations.

There is no provision in Title II for CAC to pay anything to the Oil Spill Restoration program. Various less than fee title interests were purchased by the EVOS program. Sometimes only timber

rights were purchased. In other cases, it was conservation easements or special protective covenants. Although the federal government has used oil spill money to acquire an interest in approximately 230,000 acres, only 98,947 acres of fee surface estate were purchased within the national forest, 27,357 acres within the Kenai Fjords National Park and 2,279 acres within the Alaska Maritime National Wildlife Refuge. In all cases, the surface estate was purchased subject to a conservation easement previously granted to the State of Alaska, and the village corporations retained the historic and cultural resources. CAC's proposition that the spirit of ANCSA requires that these lands now be turned over in fee, for free to CAC is highly problematic, since these lands were not originally available for selection to CNI, only to villages, and it would set a bad precedent. The United States cannot convey what it does not have.

Title II would adversely affect the 11 other ANCSA regional corporations. Under ANCSA, some 2 million acres were set aside under Sec. 14(h) for specific purposes including cemetery sites and historic places. Any of the 2 million acres not allocated or ultimately used for a specific purpose will be reallocated among all 12 regional corporations and conveyed under Sec. 14(h)(8). No Sec. 14(h)(8) entitlement can be finally calculated and conveyed until all Sec. 14(h)(1) conveyance are finished. If Title II is enacted, CAC will be able to keep its Sec. 14(h)(1) selection options open indefinitely, guaranteeing that no other regional corporation will be able to receive its full and final Sec. 14(h)(8) entitlement in the near or even foreseeable future.

The Departments are strongly opposed to Title II, which would negate important provisions of the carefully wrought 1982 agreements, effectively amend ANCSA, and provide special benefits to one Alaska Native corporation at the expense of others.

TITLE III

Title III of H.R. 2547 would require the Secretary of Agriculture to "coordinate" all land and resource management plans with all Alaska native corporations which adjoin the national forests in Alaska.

We believe that adequate and extensive coordination is already provided native corporations under existing law. As adjoining landowners, native corporations can fully participate in the land management planning process, and are encouraged to do so. Indeed, CAC has been actively involved in the revision of the Chugach National Forest plan.

If Title III is intended to provide Alaska Native corporations under ANCSA with a special status akin to that provided Indian tribes, then we believe such an amendment is clearly inconsistent with ANCSA's provision for native corporations. Unlike Indian tribes, Alaska native corporations are independent corporate, business entities organized for the benefit of their shareholders. For profit corporations should not have special rights and privileges in the land management planning process.

SUMMARY AND CONCLUSIONS

Unfortunately, H.R. 2547, if enacted, would greatly expand the benefits of the 1982 Agreement to CAC, but would take away reserved rights of the United States, the State of Alaska and the public. The proposed changes to CAC's entitlements under ANCSA will adversely affect the management of federal lands in Alaska. Finally, there is no need to provide native corporations with special and additional rights in the Forest Service land management planning processes. For these reasons, we strongly oppose this legislation.

This concludes the prepared testimony on H.R. 2547. Thank you, Mr. Chairman. I would welcome any questions the Committee may have.

